

Serial No. 10/673,724
Art Unit 3721

Amendment A

Remarks:

Responsive to the Official Action mailed July 15, 2004 in which claims 1-4 were rejected, Applicant respectfully requests reconsideration, reexamination and allowance of claims 1-4 in view of the above amendments and the following remarks.

First, the Examiner has objected to claim 3 under 35 U.S.C. 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner stated that it was unclear how the door could be opened at all if the door release can only be accessed after the door is fully opened.

Applicant has amended claims 1 and 3 to address this confusion. Specifically, the release handle is used to release the hinge for fully removing the door from the enclosure. This is separate from the door pivoting about the hinge pintle. To this end, applicant has amended claim 1 to indicate that the latch is for fully removing the door from the enclosure, which is independent from opening the door, i.e., pivoting the door to the open position. Accordingly, applicant has amended claim 3 to again indicate that the door release handle is for fully removing the door from the enclosure.

Based on the amendments to claims 1 and 3, applicant submits that the rejection under section 112 has been addressed and respectfully requests that it be withdrawn.

Next, the Examiner has rejected claims 1-4 under 35 U.S.C. §103(a) as unpatentable over Shibasaki et al, U.S. Patent No. 5,442,899 in view of Haberstroh et al., U.S. Patent No. 6,478,065. Applicant submits that this rejection is improper in that the Haberstroh patent is not a reference usable under §103(a). The Haberstroh et al. patent issued on November 12, 2002. The present application was filed claiming the benefit of priority of U.S. Provisional patent application Serial No. 60/429,640, filed November 27, 2002, less than one year after the issue date of the Haberstroh et al. patent.

The present application and the Haberstroh et al. patent are commonly owned by Illinois Tool Works; an assignment of the rights in and the Haberstroh et al. patent was recorded in the U.S. Patent and Trademark Office on June 26, 2000 on reel 010897, at frame 0197. The present application was assigned to Illinois Tool Works on September 29, 2003 on reel 014562, at frame

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0925.

Pursuant to 35 U.S.C. §103(c), "[s]ubject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section *where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person*". 35 U.S.C. 103(c) (emphasis added). In that the Haberstroh et al. patent is not effective as a reference under subsections 102(a)-(d), that patent was improperly applied as a reference. And, in that the Haberstroh et al. patent does not preclude patentability under any of 102(e) through 102(g), applicant submits that this rejection should be withdrawn.

In summary, Applicant believes that the above amendments render claims 1-4 in comport with §112 and further submits that because the Haberstroh et al. patent is not a reference usable under §§ 102 and 103, claims 1-4 are in condition for allowance and respectfully and earnestly solicits early indication of same.

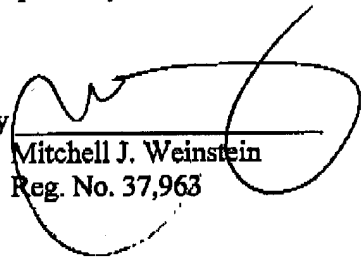
Applicant submits that no fee is due in connection with the present amendment. If, however, there is a fee due, the Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 23-0920.

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Should the Examiner believe that a telephone interview would expedite prosecution and allowance of the present application, or address any outstanding formal issues, he is respectfully requested to contact the undersigned.

Respectfully submitted,

By 
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October 7, 2004
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